

WILLIAM J. WALKER  
LEWIS SANDBERG

IBLA 80-12

Decided May 22, 1980

Appeal from the decision of the Nevada State Office, Bureau of Land Management, declaring 15 lode mining claims abandoned and void. N MC 16302-16316.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Where a claimant is not required to do any assessment work under the general mining laws, but is required nevertheless to file under 43 CFR 3833.2-1(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

3. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: William J. Walker and Lewis Sandberg, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

William J. Walker and Lewis Sandberg appeal from the decision of the Nevada State Office, Bureau of Land Management (BLM), dated September 4, 1979, declaring lode mining claims Beverly Nos. 1, 2, and 5-17, identified by serial numbers N MC 16302-16316, abandoned for failure to file (evidence of assessment work before December 31, 1978) as required by 43 CFR 3833.2. The decision specifically said evidence of assessment work was not received prior to December 31, 1978. In a telephone conversation, reflected by the memorandum to the record, with appellant Walker on September 6, 1979, BLM further explained that the requirement of 43 CFR 3833.2 was actually to file either evidence of assessment or a notice of intent to hold the claims.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), 1/ the owner of an unpatented mining claim located after October 21, 1976, is required to file either evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30 of each calendar year following the calendar year in which the claim was located. Failure to file such instruments within the prescribed time period constitutes an abandonment of the claim and the claim is void under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. Silvertip Exploration & Mining, 43 IBLA 250 (1979); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978).

Appellants' claims were located on December 15, 1977. Therefore, appellants were required to file either evidence of assessment work or a notice of intention to hold the claims on or before December 31, 1978, the calendar year following the calendar year in which the claims were located. Appellants did not do so. Accordingly, BLM properly declared the claims abandoned and void.

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1/ Subpart 3833, Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites, of Title 43, Code of Federal Regulations, was revised effective March 16, 1979, at 44 FR 9720 (Feb. 14, 1979), and further amended at 44 FR 20428 (Apr. 5, 1979). In this opinion the references to regulations are to the current version. However, we note that the revisions to cited regulations were generally editorial and did not change the substantive requirements under consideration in this case.

[2] Appellants argue that they were not required to do assessment work before December 31, 1978, and that their notices of location, properly filed, were sufficient to hold the claims until September 1, 1979. It is true that appellants were not required to perform assessment work in 1978 assessment year. The Mining Act of 1872 specifies that the period for doing the required assessment work "shall commence at 12 p.m. meridian on September 1 succeeding the date of location of the claim." 30 U.S.C. § 28 (1976). Since appellants located their claims in December 1977, their assessment year began on September 1, 1978, and therefore they had until August 31, 1979, to do their first assessment work.

Although no assessment work was required in calendar year 1978, appellants were required, nevertheless, to comply with the recordation requirements of FLPMA. On or before December 30, 1978, they were required to file with BLM evidence of any assessment work done in the previous year or, alternatively, if no assessment work were done, to file a notice of intention to hold their claims. Silvertip Exploration & Mining, supra; Donald H. Little, supra; see Juan Munoz, supra. The decision below should have stated that the claims were null and void for failure to file a notice of intention to hold; and we hereby so modify it.

[3] Appellants also argue that, as a result of BLM's finding of abandonment, their sales agreement for the claims with the Bear Creek Mining Company was nullified causing them the loss of the profits of the sale and that Bear Creek Mining Company apparently was able to acquire the claims by relocating them before appellants attempted to relocate on September 5, 1979. 2/ Thus, appellants also contend that they lost the \$3,000 cost of locating and developing the claims. Appellants characterize the filing requirements as contradictory in that they allow a citizen to locate a claim and then take it away on a technicality, and as discriminatory against small operators and in favor of large companies with legal counsel. The filing requirements

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2/ Appellants also allege that officials of BLM informed Bear Creek Mining Company of the invalidity of the claims before they were notified. A letter to the file, dated September 6, 1979, indicates that "someone had checked these casefile[s] and that is when we discovered there was not a proof of labor or notice of intent in the casefiles." It seems likely, therefore, that individuals associated with Bear Creek Mining Co. examined the files and discovered that no proof of assessment work or notice of intention to hold had been filed. It would, of course, be totally improper for employees of BLM to notify possibly adverse parties of deficiencies in another individual's filings prior to notification of the claimant. The case files, however, are public records and open to inspection. A mineral claimant who does not comply with the recordation requirements runs the risk that other individuals will discover these deficiencies and attempt to relocate the claims.

of FLPMA, however, are absolute. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Appellants assert also that the filing requirements are unconstitutional. This Board is not the proper forum for challenging the constitutionality of a statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Joan B. Thompson  
Administrative Judge

